IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 80 of 2004
in
COMPANY PETITION No 56 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILA BAUART ENGINEERING PVT. LTD.

Versus

HINDUSTAN PATER OATS (P) LTD.

Appearance:
1. O.J.APPEAL No. 80 of 2004
MR ASHOK L SHAH with MR FB BRAHMBHATT for Appellant
MR JB DASTOOR for Respondent No. 1
..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA
Date of decision: 13/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Admit. Mr JB Dastoor, learned counsel waives service of notice of admission of the appeal.

At the joint request of the learned counsel for the parties, the appeal is taken up for final disposal today.

2. This appeal is directed against the order dated 17.8.2004 which was passed by the learned Company Judge in the winding up petition filed by the present respondent No.1 after recording the consensual arrangement between the parties in as much as the appellant-Company had agreed to pay the dues of respondent No.1-Company (petitioning creditor) quantified at Rs.40,21,042/- together with interest at 9% per annum from 22.7.2002 till the date of payment in 12 equal monthly instalments, starting from August 2004 and ending with July, 2005.

3. What has prompted the appellant-Company to file this appeal is the direction, as construed by the parties, requiring the appellant to pay interest as aforesaid alongwith the instalments for the principal amount. The appellant is also aggrieved by the direction given by the learned Company Judge that if any single instalment is not paid by the appellant-Company, the matter will automatically be admitted and advertised.

4. As far as the first submission is concerned, at the hearing before us, the learned counsel for both the parties have agreed as under :-

(a) the appellant-Company will pay respondent No.1 (petitioning creditor) the principal amount of Rs.40,21,042/- in twelve monthly instalments of which five instalments are already paid from August to December, 2004, the amount of each instalment shall be Rs.3,35,086/= and the deficit on that basis in the five instalments paid so far shall be paid by 7th Feb., 2005, that all the subsequent monthly instalments shall be of Rs.3,35,086/= each and that the payment of the principal amount of Rs.40,21,042/- shall accordingly be made by July 2005 as per the arrangement already recorded by the learned Company Judge.

(b) As far as payment of interest is concerned,

(i) simple interest at the rate of 9% per annum on the amount of Rs.40,21,042/- for

the period from 22.7.2002 till 16.8.2004 shall be quantified and capitalized and on that amount the appellant-Company will pay further interest at the rate of 9% per annum for the period from 17.8.2004 till the date/s of payment, which shall be made in two instalments, the first instalment to be paid by the end of August 2005 and the last instalment to be paid by the end of September, 2005.

(ii) simple interest at the rate of 9% per annum shall also be paid on the reducing balance of the principal amount from 17.8.2004 till the date of payment and this interest component shall be paid by the end of October, 2005.

The aforesaid arrangement is thus arrived at with the consent of the parties and the order passed by the learned Company Judge shall accordingly stand modified.

5. Coming to the second submission, it is true that the learned Company Judge has directed that if any single instalment is not paid by the appellant-Company, the matter will automatically be admitted and advertised, but in the very next sentence, the learned Company Judge has also observed that on commission of any such default by the appellant-Company, respondent No.1 file a note before this Court for circulation of the petition and appropriate order for admission and advertisement will be passed.

6. As far as the aforesaid direction is concerned, in the facts and circumstances of the case and with the consent of the learned counsel for the parties, the direction is modified to the effect that if the default in payment of any instalment of the principal amount payable hereafter or instalment towards interest continues for a period of 15 days beyond the due date and if such default takes place on atleast two occasions, respondent No.1-petitioning creditor shall be at liberty to move the Company Court for recalling the order dated 17.8.2004 as modified by this order and thereupon the Company Court will pass appropriate orders in accordance with law, if such an eventuality arises at all.

7. At the request of Mr Ashok L Shah, learned counsel for the appellant, Mr Dastoor for respondent No.1 states that respondent No.1 shall assist the appellant in obtaining/recovering the appellant's dues from Dodsal

Projects (P) Ltd.

8. The order dated 17.8.2004 passed by the learned Company Judge in Company Petition No. 56 of 2003 accordingly stands modified in terms of the arrangement recorded in paras 4 and 6 hereinabove.

9. The appeal is accordingly allowed to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(D.H. Waghela, J.)

sundar/-